

REMARKS

In response to the Office Action mailed March 25, 2004, Applicants amend their application and request reconsideration. In this Amendment claim 15 is added so that claims 1-15 are now pending.

**Preliminary Amendment, Claim Numbering,
Claim Objections, and Rejection Pursuant to 35 USC 112**

An odd and totally erroneous treatment has been given to the Preliminary Amendment. Apparently the Examiner is not familiar with the rules concerning the form of amendments in effect at the time the Preliminary Amendment was filed. An assumption has been made that the Preliminary Amendment included claim cancellations. A diligent search of the Preliminary Amendment will reveal that the word "cancel", in any of its forms, does not appear anywhere within the Preliminary Amendment. The word that was used, the word prescribed by the USPTO, was "replaced". That word, used because of instructions from the USPTO, did not mean cancel and substitute an entirely different claim, but rather indicated the form of the claim, after amendment.

At the time the Preliminary Amendment was filed, Applicants were instructed to supply a "clean" copy of only the claims that were amended in the beginning part of an Amendment. Applicants were also instructed to add as an attachment to amendments a listing of all of the claims amended showing the amendments made. There was no requirement to show any claim that was not amended. In this instance, Applicants also attached a complete copy of all claims pending upon entry of the Preliminary Amendment as a second attachment to the Preliminary Amendment.

In accordance with USPTO instructions then in force, the first part of the Preliminary Amendment did not reproduce claim 8 because there was no amendment of claim 8. It is understandable that the Examiner may be confused because the USPTO has changed the form of amendments for conventional utility patent applications at least twice since the Preliminary Amendment in the present patent application was filed. However, the conclusion reached by the Examiner, that claim 8 was cancelled and therefore claims 9-14 are orphan claims with no parent claim from which to depend, is irrational, further demonstrating the error in the treatment that has been given to the claims in this patent application. For that reason, the only proper remedy is to follow the instructions of the USPTO that were in force at the time the Preliminary Amendment was filed, reinstating claims 1-14 as the original claims. That numbering is

followed here both with respect to the original claims and as to the newly added dependent claim 15.

For the foregoing reasons, the claim objections referring to the claim numbering are totally erroneous and must be withdrawn, with the restoration of the original claim numbering. Further, the rejection of claims 9-14 as not being susceptible to examination for lacking a parent claim and requiring a change in dependency is erroneous and illogical. Therefore, that rejection must be withdrawn and claims 8-14 must be examined. Since claims 8-14 have not been previously examined, although those claims were properly filed and amended, those claims must now be examined, for the first time, so that the Applicants can receive the value of the filing fee that was paid. It follows that the next Official Action, if not a Notice of Allowance, cannot properly be a final rejection because claims properly filed have never been examined. If the next communication purports to be a final rejection, the finality will have to be contested by way of a Petition.

The Invention and this Amendment

In this Amendment the claims that were examined are amended for clarity. The invention concerns a portable apparatus. That apparatus includes four elements, an inputting means, a transmitting means, a receiving means, and a control means. Some of the language of the claims has been changed for clarity, for example to explain that the information input through the inputting means is instruction information for effecting control of an apparatus that is external to, i.e., outside, the portable apparatus. The third paragraph of claim 1 is amended to make clear that the central processing unit and the database are separate elements that are not part of the portable apparatus. Rather, when the portable apparatus transmits the instruction information for effecting control, that information is supplied to a central processing unit where some processing occurs, usually in consultation with a database. As a result of that processing, a remote controller control instruction is generated, outside the portable apparatus. Then, that remote controller control instruction is received by the portable apparatus through the receiving means of the portable apparatus. Subsequently, that remote controller control instruction is used by the control means of the portable apparatus for effecting control, for example changing the temperature set point of an air conditioner, of the external, controlled apparatus. Claims 2-5 describe various kinds of input means and are amended for clarity. Claims 6 and 7 are amended to make clear that the acceleration sensor and that the environmental sensor are also parts of the portable apparatus claimed in claims 6 and 7, respectively. The patent application describes the acceleration sensor as sensing shaking of the portable apparatus to provide input instruction information. Claim 6 is clarified in accordance with that description. Claim 7 likewise makes

clear that the portable apparatus according to that claim includes an environmental sensor, such as a thermometer, humidity sensor, or the like.

As explained in the patent application, the claimed apparatus makes control of the controlled external apparatus from a remote location, through the use of the portable apparatus, relative simple. The user need only input instruction information in a relatively general form, such as by voice, gesture, writing, or typing. That input information is transmitted to a CPU where processing essentially decodes that input information, based, for example, upon information peculiar to a particular user, and generates, in response, remote controller control instructions that match the input needs of the apparatus that is controlled. That remote controller control instruction is received by the portable apparatus, which then uses this translated form of instruction that is compatible with the apparatus control to effect control of that controlled apparatus.

Newly added claim 15 describes a housing, like the housing of the portable telephone embodiment illustrated in Figure 1 of the patent application, and containing the four listed elements of claim 1, for example as shown in Figure 3, within the housing 1.

Claims 1, 3, 6, and 7 were rejected as anticipated by Nguyen (U.S. Patent 6,256,033). This rejection is respectfully traversed.

It is fundamental that to anticipate a claim a prior art publication must describe every element of the claimed invention. Nguyen fails that essential test.

What Nguyen describes is an apparatus that captures an image through a video camera, for example 200 as shown in Figure 2. That captured image of a person expressing various gestures is forwarded to some kind of image processing apparatus, presumably the computer illustrated in Figure 2 of Nguyen. There, some signal processing occurs. In a particular example described in Nguyen, when the person whose image is being captured waves arms as if flying like a bird, then the signal processing converts the image into an image of a bird. That converted image is then displayed on the monitor screen 208 shown in Figure 2 of Nguyen.

Giving the broadest possible interpretation to Nguyen, and particularly considering the portions of Nguyen to which the Examiner directed attention, there cannot be any anticipation.

Perhaps the video camera 200 would be considered an inputting means and maybe the gestures by the person 202 might be considered instructions. Somehow this captured image information is transmitted to a computer, which presumably includes a central processing unit. The central processing unit may include a database that looks up a correlation between particular images received, such as flapping arms, to find the corresponding image to be generated, for example, the bird. The image retrieved from the database cannot reasonably be considered a remote controller control instruction. The image supplied by the database is subsequently

directed to the monitor screen 208. Presumably the Examiner concludes that the monitor of the computer is a receiving means. It is not apparent what part of Nguyen the Examiner is comparing to the control means of claim 1.

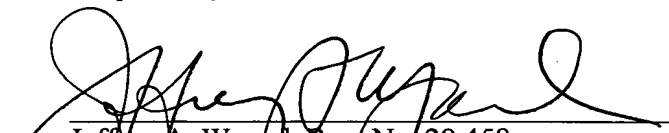
Nguyen fails to meet the limitations of claim 1 on the most basic grounds. That claim is directed to a portable apparatus. It is apparent from Figure 2 of Nguyen that the video camera, video monitor, and computer do not comprise a portable apparatus. This fact is particularly apparent with respect to new claim 15, since the video camera, computer, and video monitor of Nguyen are not contained within a single housing. Returning to claim 1, it is apparent that the apparatus described by Nguyen provides no means of controlling an external apparatus. The only thing that is controlled is the image that appears on the monitor. Thus, Nguyen does not meet claim 1 for the additional reason that it has no control means that is part of a portable apparatus that sends to the controlled apparatus a remote controller control instruction, or the equivalent, that is received by the receiving means of that portable apparatus. Accordingly, claim 1 and its dependent claims 2-7 and 15 cannot be anticipated by Nguyen.

Claim 2 was rejected as unpatentable over Nguyen in view of Muthusamy et al. (U.S. Patent 6,310,629) and claims 4 and 5 were rejected over Nguyen in view of Dupouy (U.S. Patent 6,057,845). These rejections are respectfully traversed, without detailed discussion. It is apparent that these rejections are founded upon the assertion that claim 1 is anticipated by Nguyen. Because there is no such anticipation, for the reasons already presented, the premises of the other two rejections fail and those other two rejections cannot be properly maintained.

Summary

Reconsideration with respect to the examined claims and initial examination of claims 8-15 are earnestly solicited.

Respectfully submitted,



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